

**CITY OF BIRMINGHAM
BOARD OF ETHICS MINUTES**

DECEMBER 1, 2015 – 3:00 PM
151 MARTIN, BIRMINGHAM, CONFERENCE ROOM 202

I. CALL TO ORDER

Sophie Fierro-Share, Chairperson, at 3:06 PM.

II. ROLL CALL

Present: Ms. Fierro-Share
Mr. Robb
Mr. Schrot
Absent: None

Administration: City Attorney Currier, Clerk Pierce, Library Director Koschik and Assistant Library Director Craft

III. APPROVAL OF MINUTES

A. Approval of minutes of November 6, 2015.

MOTION: Motion by Robb, seconded by Schrot:

To amend page three of the minutes as follows:

“Mayor Pro Tem Hoff noted that up until now, the Commissioners have been recusing themselves due to conflict of interest. ~~She noted that disclosure makes sense which will explain the reason why, then the Commission can decide from there. She noted that the Commission can best make its decision on whether a recusal is in order when the disclosure of a potential conflict of interest is accompanied with an explanation of the reasons.~~”

VOTE: Yeas, 3
Nays, None
Absent, None

MOTION: Motion by Robb, seconded by Schrot:

To amend page three as follows and to correct the spelling of carte blanche on page five:

“MOTION: Motion by Robb, seconded by Schrot: To determine that the answer is no and to provide a written opinion with advice and rationale to the City Commission on best practices consistent with the ethics ordinance and the City Commission’s own procedure documents in how to disclose and perceive potential conflicts.”

VOTE: Yeas, 3
Nays, None
Absent, None

MOTION: Motion by Robb, seconded by Schrot:

To approve the minutes of November 6, 2015 as amended.

VOTE: Yeas, 3
Nays, None
Absent, None

IV. UNFINISHED BUSINESS

A. Review of Advisory Opinion Request:

1. 2015-07 Advisory Opinion: City Commission referred question of October 12, 2015

Mr. Robb explained that the Board had needed additional documentation. The Advisory Opinion request submitted by the City Commission was a result of a concern about the process involving the contract for the first set of design drawings to be done in the Library and the engagement of Mr. Cohen.

Mr. Robb disclosed that he is a former classmate of Mr. Gardner, however does not have any current involvement with him. He stated that he can be impartial.

Mr. Schrot disclosed that he knows many of the individuals in the room and can be impartial.

The individuals in the room introduced themselves – Library Board members David Underdown, Sheila Brice, Frank Pisano, Jim Suhay, Library Director Koschik, Assistant Library Director Rebekah Craft, Architects Jim Gardner and Bob Ziegelman.

Mr. Koschik explained the history of the library expansion project. He explained that an RFP was issued in February and five bids were received. The Library Board selected Luckenbach Ziegelman Gardner (LZG) at a public meeting. He noted that the decision to select Aaron Cohen as part of the process was done by the architect firm. He noted that every meeting was publically noticed and the minutes were published.

Mr. Ziegelman and Mr. Gardner, with LZG, explained that Mr. Cohen was chosen because of his expertise in the subject matter.

In response to a question from Mr. Schrot, Mr. Koschik explained that Mr. Cohen had not submitted an RFP for this project or the project in 2014. He noted that there are not many library consultants in the nation. Mr. Koschik confirmed that Mr. Cohen did not criticize any aspect of the project after Luckenbach Ziegelman was awarded the contract, however he did publically oppose the previous plan.

Mr. Ziegelman confirmed for Mr. Robb that it is very common to bring in an expert on this type of project. He stated that he has not previously worked with Mr. Cohen.

Mr. Ziegelman confirmed for Mr. Robb that Mr. Cohen only gave advice and had no decision making authority.

Mr. Robb read the definition of "consultant" from the ordinance: "Consultant means a person who gives professional advice or services regarding matters in the field of his or her special knowledge or training."

Mr. Garnder explained that given the current phase, many of the consultants have not come into play because their services are not needed at this point.

In response to a question from Mr. Schrot, Mr. Koschik explained that the library used the City's RFP template. He noted that the library has the discretion for the interior of the building and the City has the discretion for the exterior as it is a City owned building.

MOTION: Motion by Robb, seconded by Schrot:
To close the record.

VOTE: Yeas, 3
Nays, None
Absent, None

Mr. Robb restated the question was whether the process used in the selection of the architect was in violation of Section 2.323 of the Ethics Ordinance.

The Board discussed the Ethics Ordinance. The Board agreed that there is no evidence of any violation of Section 2-323:

Sec. 2-323. - Intention of code.

It is the intention of section 2-324 below that city officials and employees avoid any action, whether or not specifically prohibited by section 2-324, which might result in, or create the appearance of:

- (1) Using public employment or office for private gain;
- (2) Giving or accepting preferential treatment, including the use of city property or information, to or from any organization or person;
- (3) Losing complete independence or impartiality of action;
- (4) Making a city decision outside official channels; or
- (5) Affecting adversely the confidence of the public or the integrity of the city government.

The code of ethics is intended to be preventative and not punitive. It should not be construed to interfere with or abrogate in any way the provisions of any federal or state statutes, the City Charter, the city ordinances, or any rights and/or remedies guaranteed under a collective bargaining agreement.

This declaration of policy is not intended to apply to contributions to political campaigns, which are governed by state law.

The Board discussed the conflict of interest provision in Section 2.324(a) and agreed some provision are not applicable such as 1, 2, 5, 6, and 9. The Board agreed that 3, 4, 7, and 8 could have some relevance, however there is no conflict or violation.

Sec. 2-324. - Promulgation.

(a) Conflict of interest—General.

- (3) Every official or employee of the city shall use personnel resources, property and funds under his or her official care and control solely in accordance with prescribed constitutional, statutory and regulatory procedures and not for personal gain or benefit.
- (4) No official or employee of the city shall directly or indirectly, solicit or accept any gift or loan of money, goods, services or other thing of value for the benefit of any person or organization, other than the city, which tends to influence the manner in which the official or employee or any other official or employee performs his or her official duties. Gratuities do not include fees for speeches or published works on legislative subjects and, except in connection therewith reimbursement for expenses for actual expenditures for travel, and reasonable subsistence, for which no payment or reimbursement is made by the city, invitations to such events as ground breakings, grand openings, charitable or civic events, or inconsequential gifts from established friends.
- (7) No official or employee of the city shall participate, as an agent or representative of the city, in the negotiation or execution of contracts, granting of subsidies, fixing of rates, issuance of permits or certificates, or other regulation or supervision, relating to any business entity in which he or she has, directly or indirectly, a financial or personal interest.
- (8) No official or employee of the city shall use, or attempt to use, his or her official position to secure, request or grant unreasonably any special consideration, privilege, exemption, advantage, contract or preferential treatment for himself, herself, or others, beyond that which is available to every other citizen.

The Board discussed the disclosure provision in Section 2.324(b). The Board agreed that the appropriate disclosure was made by LZG and that 2.324(b)(1)&(2) are satisfied.

Sec. 2-324. - Promulgation.

(b) Full disclosure.

(1) Responsibility to disclose. It shall be the responsibility of the official or employee to disclose the full nature and extent of his or her direct or indirect financial or personal interest in a matter before him or her.

No official or employee of the city shall participate, as an agent or representative of the city, in approving, disapproving, voting, abstaining from voting, recommending or otherwise acting upon any matter in which he or she has directly or indirectly a financial or personal interest. The official or employee shall, in such circumstances, recuse himself or herself from the matter before him or her.

(2) Disclosure of conflict of interest and disqualification.

a. Any city official or employee who has a conflict of interest, as defined herein, in any matter before the city shall disclose such fact on the appropriate record of the city prior to discussion or action thereon and shall refrain from participating in any discussion, voting or action thereon, as follows, provided that such exceptions shall be observed as are permitted by law:

1. A city commissioner shall disclose any conflict of interest and the nature and extent of such interest on the record of the city commission;

2. A member of any city board, commission or committee shall disclose any conflict of interest and the nature and extent of such interest on the records of said board, commission or committee;

3. A city employee who has a financial or other interest in a matter before the city commission or any city board, commission or committee and who participates in discussion with, or gives an official opinion to the city commission, or to such other city board, commission or committee relating to such matter, shall disclose on the records of the city commission or such other city board, commission or committee, as the case may be, any conflict of interest and the nature and extent of such interest.

4. Otherwise, any appointed city official or employee shall address such a disclosure to the supervisory head of his or her department, and any elected city official shall address such a disclosure to the general public.

b. If a city official, commissioner or employee who has a conflict of interest, as defined herein, in any matter before the city, and who discloses that conflict on the appropriate records but who refuses to refrain from discussion, deliberation or voting thereon, the matter under consideration shall be immediately referred to the board of ethics for a final determination as to the conflict in question and whether the official, commissioner or employee must refrain from discussion, deliberation, action or voting thereon.

c. Within 20 days after election, employment, appointment, or the effective date of this ordinance, or any change in the facts set forth in the city official's or employee's previously filed disclosure statement, each city official and employee shall file with the city clerk an affidavit and disclosure statement. The city clerk shall provide each city official or employee with the required affidavit and disclosure statement form immediately upon his or her election, employment or appointment. The affidavit and disclosure statement does not apply to part-time and temporary employees of the city. Additionally, the disclosure requirements on this section do not apply to regular full-time employees below the level of assistant department head, except at the discretion of the city manager.

d. The effective date for this ordinance shall be July 21, 2003.

The Board agreed that there was no violation of the Ethics Ordinance.

MOTION: Motion by Schrot, seconded by Robb:

That the process used in the selecting the architect for this project met the requirements of the ethics ordinance.

VOTE: Yeas, 3
 Nays, None
 Absent, None

The Board agreed that Mr. Schrot would write the opinion.

The meeting was recessed at 4:40 PM.

The meeting was reconvened at 4:50 PM.

V. NEW BUSINESS

A. Review of Draft Opinion Advisory Opinion Request:

1. 2015-06 Advisory Opinion: City Commission referred question of September 21, 2015

The Board discussed the draft opinion for Advisory Opinion request 2015-06. Mr. Schrot suggested the term "relationships" and "situation" be clarified. He suggested other sections of the ordinance would be ~~relative~~ relevant as well. The Board agreed to add the following sentence to the opinion: "For the purpose of this opinion, "relationship" means personal interest, financial interest, and the public policy as defined by the ethics ordinance.

Mr. Robb suggested the last paragraph on page two include that if the conflict has been disclosed, but the board or committee member refuses to recuse themselves, the matter will be referred to the Board of Ethics.

The Board discussed Section 2-324(b)(2)(b) "If a city official, commissioner or employee who has a conflict of interest, as defined herein, in any matter before the city, and who discloses that conflict on the appropriate records but who refuses to refrain from discussion, deliberation or voting thereon, the matter under consideration shall be immediately referred to the board of ethics for a final determination as to the conflict in question and whether the official, commissioner or employee must refrain from discussion, deliberation, action or voting thereon."

Mr. Schrot referred to the last sentence in Section 2-324(a)(6): "No official or employee of the city shall engage in or accept employment or render services for any private or public interest when that employment or service is incompatible or in conflict with the discharge of his or her official duties or when that employment may tend to impair his or her independence of judgment or action in the performance of his or her official duties.

This section shall not prohibit a part-time elected or appointed city official from engaging in private employment or business on his or her own time as a private citizen and where city business is not involved, subject to his or her disclosing such private employment or business on the public record for any matter on which he or she may be called upon to act in his or her official capacity, in accordance with Section 5 B below. He or she shall refrain from voting upon or otherwise participating in debate on any such matter." He noted that it is important for one to understand this when considering recusal. It is one of the few measures in the ordinance that allows one to evaluate whether or not someone can vote or participate in the discussion.

The Board agreed that Section 2-324(a)(9) also sets the tone and gives context: "It is recognized that various boards and committees are part of the plan of government for the city. As such, it is further recognized that by virtue of the various requirements for membership of the board, a member may be placed in the position of participating in a decision that may directly or indirectly affect his or her financial or personal interests. Therefore, those members of the various boards and committees in the city, as they may be established from time to time, may participate in such decisions provided that they act: a. In furtherance of the public good; b. In compliance with the duties of their respective boards; and, c. In a manner consistent with subsection (8) of this section."

Ms. Fierro-Share will revise the draft opinion and return back at the next meeting.

B. Review of Ethics Ordinance (Chapter 2, Article IX)

The Board discussed the items to be reviewed in the Ethics Ordinance. Ms. Fierro-Share expressed concern with problematic judgmental phrases that tend to undermine respect. She noted that the term "morality" does not belong in the ordinance.

Ms. Fierro-Share agreed to highlight the problematic sections in the ordinance and return it at the next meeting for further discussion.

The meeting was recessed at 5:28 PM.

The meeting was reconvened at 5:35 PM for the Food for Thought Seminar.

"Food for Thought" Seminar, Conference Room 205

The Board of Ethics presented the "Food for Thought" seminar to various board and commission members and employees. The Board presented the Ethics in Government; City Attorney Tim Currier presented the Open Meetings Act and Freedom of Information Act; and Coco Siewert presented Parliamentary Procedures and Roberts Rules of Order.

MOTION: Motion by Fierro-Share, seconded by Schrot:
To adjourn.

VOTE: Yeas, 3
Nays, None
Absent, None

VI. PUBLIC COMMENT

VII. ADJOURN

The meeting was adjourned at 7:35 PM.

Laura M. Pierce
City Clerk